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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

PRODUCTS AND VENTURES  
INTERNATIONAL,

Plaintiff,

v.

AXUS STATIONERY (SHANGHAI)  
LTD., et al.,

Defendants.

ROBERTA TRADING CORPORATION,

Counterclaimant,

v.

PRODUCTS AND VENTURES  
INTERNATIONAL and CARLOS  
FAIRBANKS,

Counterclaim Defendants.

Case No. 4:16-CV-00669-YGR

**UPDATED JOINT CASE  
MANAGEMENT STATEMENT**

Date: April 10, 2017

Time: 2:00 p.m.

Courtroom: 1, Fourth Floor

Judge: Hon. Yvonne Gonzalez Rogers

1                                    **UPDATED JOINT CASE MANAGEMENT STATEMENT**

2            Pursuant to Civil Local Rule 16-9 and the Standing Order for All Judges of the Northern  
3 District of California, plaintiff Products and Ventures International (“Plaintiff” or “PVI”) and  
4 defendants Roberta Trading Corporation and Andre Viegas (collectively, “Defendants”) have met  
5 and conferred and hereby submit this Updated Joint Case Management Statement.

6            **1. JURISDICTION AND SERVICE**

7            Plaintiff asserts that the Court has diversity jurisdiction over this action pursuant to 28  
8 U.S.C. § 1332(a) because all defendants are citizens of a foreign state or domiciled in a foreign  
9 state, and the amount in controversy exceeds \$75,000. Defendants are not disputing subject  
10 matter jurisdiction at this time.

11           There are disputed issues regarding personal jurisdiction. Specifically, Defendants  
12 dispute that they are subject to personal jurisdiction in California. On January 18, 2017, the Court  
13 granted defendants Axus Stationery (Hong Kong) Ltd., Highton Ltd., Howin Investments Ltd.  
14 and Noblesse (Hong Kong) Ltd.’s motion to dismiss the claims against them for lack of personal  
15 jurisdiction.<sup>1</sup> The Court denied without prejudice Plaintiff’s request for leave to amend its  
16 amended complaint. The Court stated in its order that “Plaintiff may later file a motion for leave  
17 to amend should further development of the record warrant such a request.” (Dkt. 144 at 17.)  
18 Plaintiff intends to file a motion for leave to file a second amended complaint. Because  
19 Defendants are unaware of any basis on which the Court’s original denial of leave to amend  
20 should be disturbed, Defendants anticipate opposing the plaintiff’s motion for leave.

21           In light of the disputes relating to jurisdiction, there are no disputed issues regarding  
22 venue at this time.

23           Among the various defendants named in this action, Plaintiff contends that it has served

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25 <sup>1</sup> Additionally, the Court dismissed all claims against defendant Kenpark Ltd. for failure to state  
26 a claim, dismissed the intentional interference with contract and intentional interference with  
27 prospective economic advantage claims against defendant Roberta Trading Corporation for  
28 failure to state a claim and dismissed the breach of contract and breach of the implied covenant of  
good faith and fair dealing claims against defendant Andre Viegas for failure to state a claim.  
(Dkt. 144.)

1 all of them except to the extent it is still in the process of completing service on the following four  
2 defendants through the Ministry of Justice (“MOJ”) of the People’s Republic of China in  
3 accordance with the requirements imposed by the MOJ pursuant to the Hague Convention: Axus  
4 Stationery (Shanghai) Ltd. (“Axus”), Shanghai Marco Stationery Co., Ltd. (“Shanghai Marco”),  
5 Shanghai Laikesheng Pen Material Co. Ltd. (“Shanghai Lexon”), and Peifeng Xu (the “Non-  
6 Served Defendants”). On May 19, 2016, a representative of the MOJ confirmed receipt of the  
7 service documents, and stated that the documents will be transferred to the Supreme People’s  
8 Court. On February 13, 2017, Plaintiff filed a motion for substituted service on the Non-Served  
9 Defendants. As explained in the motion, Plaintiff contends that service through the Ministry of  
10 Justice is now taking up to 18 months to complete, and in some cases, taking years. Plaintiff has  
11 received little substantive information from the Ministry of Justice on the status of its efforts to  
12 serve process through the Hague Convention on the Non-Served Defendants. Defendants  
13 opposed the motion for substitute service on the grounds that Plaintiff’s request to serve the Non-  
14 Served Defendants through Hogan Lovells US LLP, if granted, would violate those defendants’  
15 due process rights because that law firm does not represent those defendants and that Plaintiff has  
16 failed to demonstrate that substitute service is warranted with respect to the Non-Served  
17 Defendants.

18 On March 15, 2017, Roberta Trading Corporation filed an amended counterclaim against  
19 Plaintiff and Carlos Fairbanks. On March 20, Roberta Trading Corporation mailed to Mr.  
20 Fairbanks at both of his California addresses service documents relating to the amended  
21 counterclaim and requested that he sign an acknowledgment of service. In addition, those  
22 documents were provided to counsel for Plaintiff and Mr. Fairbanks on March 21. Roberta  
23 Trading Corporation has repeatedly requested that Mr. Fairbanks’ counsel accept service of the  
24 counterclaim on his behalf and has informed Mr. Fairbanks that, if he does not return the  
25 executed acknowledgment form within 20 days from the date on which it was mailed, Roberta  
26 Trading Corporation will seek to recover from him all costs incurred to pursue further efforts to  
27 serve him pursuant to California law. On March 28, Mr. Fairbanks’ counsel informed Roberta  
28 Trading Corporation that they have discussed its most recent request regarding service with Mr.

1 Fairbanks but that they do not know whether they will agree to accept service on his behalf or  
2 when a decision will be made regarding that matter. Mr. Fairbanks' counsel has already pointed  
3 out to Roberta Trading Corporation that Mr. Fairbanks is domiciled in Italy. Thus, as the Court  
4 had previously held that service of process upon Mr. Viegas was governed by Federal Rule of  
5 Civil Procedure 4(f) (Dkt. No. 72 at 3), Mr. Fairbanks contends that service of process upon him  
6 is similarly governed by Rule 4(f) and not by California law. Furthermore, Mr. Fairbanks'  
7 counsel has already offered to accept service of process on his behalf should the Court grant  
8 Plaintiff's Motion for Substituted Service on Foreign Defendants.

9 **2. FACTS**

10 **a. Plaintiff's Statement**

11 Plaintiff PVI was a worldwide supplier of components for use in the manufacturing of  
12 wooden pencils. Defendant Shanghai Marco Stationery Co., Ltd. was a pencil manufacturer  
13 incorporated in China. On February 27, 1997, PVI entered into a distribution agreement  
14 ("Distribution Agreement") with defendant Shanghai Marco Stationery Co., Ltd., its subsidiaries  
15 and related companies, and Marco Trading Corporation<sup>2</sup> (collectively, "Shanghai Marco"), a  
16 related company having managerial control of, and common owners, as Shanghai Marco.

17 Under the Distribution Agreement, PVI agreed to provide Shanghai Marco with slat-  
18 making technology and technical assistance in the treatment of pencil slats, and to meet minimum  
19 annual sales quotas of Shanghai Marco's products through the life of the Distribution Agreement.  
20 In exchange, Shanghai Marco agreed to grant PVI the exclusive worldwide right to distribute  
21 wooden pencil slats and unfinished wooden pencils supplied by Shanghai Marco with certain  
22 enumerated exceptions. Shanghai Marco also promised to maintain sufficient inventory and  
23 supplies to enable it to fulfill PVI's orders, and to provide PVI with the lowest available prices  
24 and discounts, among other terms and conditions. The Distribution Agreement had an initial term  
25 of eight years, subject to PVI's option to renew the Distribution Agreement for additional,  
26 consecutive eight-year terms as long as PVI satisfied the minimum annual sales quota

27 \_\_\_\_\_  
28 <sup>2</sup> Since renamed to defendant Roberta Trading Corporation.

1 requirement.

2 PVI fully performed its obligations during the first eight-year term of the Distribution  
3 Agreement (1997-2005). On October 31, 1998, Shanghai Marco executed a certification stating  
4 that PVI had fully satisfied its obligation to provide technical assistance to Shanghai Marco. PVI  
5 also ordered sufficient quantities of product from Shanghai Marco during this initial eight-year  
6 term. Beginning in 2000, at Mr. Viegas's request, PVI placed orders not with Shanghai Marco  
7 itself, but with defendant Shanghai Lexon, and made payments for its orders to Shanghai Lexon  
8 and defendant Kenpark. Also starting in 2000, Mr. Viegas informed PVI that defendant Shanghai  
9 Lexon was assuming all of Shanghai Marco's obligations and responsibilities under the  
10 Distribution Agreement.

11 In 2005, PVI exercised its option to renew the Distribution Agreement for another eight-  
12 year term (2005-2013). By 2010, Shanghai Marco and Shanghai Lexon had assigned all interests  
13 and obligations under the Distribution Agreement to defendant Axus (together with Shanghai  
14 Lexon, the "Assignees"). During the second eight-year term, PVI ordered or attempted to order  
15 sufficient quantities of product from Shanghai Marco and the Assignees. Shanghai Marco and the  
16 Assignees, however, began breaching their obligations by, among other things, (i) refusing to  
17 make sufficient product available to fill PVI's orders; (ii) refusing to sell product to PVI at the  
18 lowest available prices and discounts; (iii) selling product directly to PVI's customers (or PVI's  
19 customer's customers) without PVI's consent; (iv) refusing to pay a required 2.5% sales  
20 commission in the event they made direct sales with PVI's permission; and (v) as to Axus,  
21 transferring its knowledge about the slat-making technology provided by PVI to multiple entities  
22 without PVI's permission and continuing to use this technology after Shanghai Marco and the  
23 Assignees had stopped performing under the Distribution Agreement.

24 Due to defendants' misconduct, PVI lost profits of approximately \$20 million, lost the  
25 ability to enter into joint ventures with various third-parties, and ultimately went out of business.  
26 PVI brings the following claims against all defendants: (i) breach of contract; (ii) breach of the  
27 implied covenant of good faith and fair dealing; (iii) intentional interference with contract; and  
28 (iv) intentional interference with prospective economic advantage. PVI also asserts a claim for

1 trade secret misappropriation against Axus only. The Court has dismissed all claims against  
2 defendant Kenpark Ltd. for failure to state a claim, and has dismissed the intentional interference  
3 with contract and intentional interference with prospective economic advantage claims against  
4 defendant Roberta Trading Corporation for failure to state a claim. Plaintiff intends to file a  
5 motion for leave to file a second amended complaint re-asserting these dismissed claims.

6 **b. Defendants' Statement**

7 Defendants dispute much of what the plaintiff cites as “facts” in its statement above.  
8 Shanghai Marco Stationery Co., Ltd. was a premier Chinese pencil manufacturer that supplied  
9 products to a number of leading pencil brands. In 1996, PVI, a small startup company with  
10 virtually no history in the pencil products industry, approached Shanghai Marco Stationery to  
11 propose that the companies collaborate in the supply and distribution of wooden slats used in the  
12 production of wood-cased pencils. On February 27, 1997, Shanghai Marco Stationery and Marco  
13 Trading Corporation (collectively, “Shanghai Marco”) and PVI met in Shanghai, China to  
14 execute a distribution agreement to allow those parties to work together in distributing wooden  
15 slats. That was the only purpose of the agreement. The three entities executed the agreement  
16 through their respective corporate representatives. Peifeng Xu signed the agreement as  
17 “President” on behalf of Shanghai Marco Stationery, Andre Viegas signed as “President” on  
18 behalf of Marco Trading Corporation and Carlos Fairbanks signed as “President” on behalf of  
19 PVI. Shanghai Marco Stationery, Marco Trading Corporation (*see* footnote 1, *supra*) and PVI  
20 are the only parties to the distribution agreement.

21 The distribution agreement provided to PVI the exclusive right, subject to delineated  
22 exceptions, to distribute wooden pencil slats and unfinished wooden pencils manufactured and/or  
23 supplied by Shanghai Marco. The agreement did not apply to any other products or materials and  
24 specifically excluded finished pencils, which Shanghai Marco expressly remained free to sell to  
25 whomever it wished. In exchange for the right to distribute pencil slats and unfinished pencils,  
26 PVI promised, among other things, to use Shanghai Marco as its primary Chinese supplier for all  
27 products listed in the agreement, to provide “technical assistance” to Shanghai Marco “in the  
28 treatment of pencil slats, including chemical engineering, development of treatment solutions,

1 kiln drying and the selection and design of equipment relating to such processing,” and to “assist  
2 in the installation, start-up, modification and general procedures relating to the operation of said  
3 treatment plant.” (Dkt. 1-1 at 2-3.)

4 Contrary to the plaintiff’s contentions above, PVI did not perform any of its obligations  
5 under the distribution agreement and it was PVI, rather than any of the defendants, that breached  
6 the agreement. Indeed, Shanghai Marco continuously supplied PVI with products pursuant to the  
7 requirements of the distribution agreement but PVI repeatedly failed to satisfy its minimum  
8 annual volume requirements and, ultimately, failed to engage in reasonable efforts to distribute  
9 Shanghai Marco’s products, which was the primary benefit for which Shanghai Marco had  
10 bargained in the distribution agreement. And PVI never provided the technological  
11 assistance/support that it promised in the distribution agreement. While PVI alleges that Shanghai  
12 Marco breached the agreement by selling pencils to other Shanghai Marco customers, Shanghai  
13 Marco’s sales of finished pencils to customers other than PVI are expressly excluded from the  
14 scope of the agreement. Moreover, Mr. Viegas never informed the plaintiff that Shanghai Lexon,  
15 or any other defendant, “was assuming all of Shanghai Marco’s obligations and responsibilities”  
16 under the distribution agreement. Likewise inaccurate is the plaintiff’s contention that, by 2010,  
17 Shanghai Marco and Shanghai Lexon had assigned all interests and obligations under agreement  
18 to defendant Axis Stationery (Shanghai) Ltd. (“Axis”).

19 In addition to PVI’s breaches of its obligations under the distribution agreement, Roberta  
20 Trading Corporation discovered that PVI and Mr. Fairbanks intentionally sought out business  
21 contacts and customers of Roberta Trading Corporation and Shanghai Marco and disseminated  
22 false, disparaging information to those contacts and customers regarding Roberta Trading  
23 Corporation, Shanghai Marco and their business in an effort to disrupt their professional  
24 relationships with those contacts and customers. PVI’s and Mr. Fairbanks’ conduct has damaged  
25 Roberta Trading Corporation’s and Shanghai Marco’s professional reputations and interfered  
26 with the business that they conduct, and/or their ability to conduct future business, with those  
27 contacts and customers. As a result of these facts, Roberta Trading Corporation has asserted  
28 counterclaims against PVI and Mr. Fairbanks, who are alter egos of one another, for breach of

1 contract, breach of the covenant of good faith and fair dealing implied in the distribution  
2 agreement and intentional interference with prospective economic advantage. Roberta Trading  
3 Corporation has also asserted a counterclaim against Mr. Fairbanks for intentional interference  
4 with contract. The facts adduced during discovery will support each of the facts stated herein.

5 **3. LEGAL ISSUES**

6 The principal legal issues in this case are:

- 7 a. Whether Plaintiff may serve the summons and complaint on the Non-  
8 Served Defendants through counsel of record for defendants Roberta Trading Corporation and  
9 Andre Viegas in this action.
- 10 b. Whether Mr. Viegas and Roberta Trading have adequately pleaded certain  
11 affirmative defenses in their Answer to Plaintiff's Amended Complaint.
- 12 c. Whether the Court has personal jurisdiction over the Non-Served  
13 Defendants and non-parties Axus Stationery (Hong Kong) Ltd., Highton Ltd., Howin Investments  
14 Ltd. and Noblesse (Hong Kong) Ltd.
- 15 d. Whether Plaintiff has adequately stated a claim against the Non-Served  
16 Defendants.
- 17 e. Whether the Court should grant Plaintiff's motion for leave to file a Second  
18 Amended Complaint re-asserting claims against several of the dismissed defendants.
- 19 f. Whether any defendant is liable for breach of the Distribution Agreement.
- 20 g. Whether any defendant is liable for breach of the implied covenant of good  
21 faith and fair dealing.
- 22 h. Whether any defendant is liable for intentional interference with contract.
- 23 i. Whether any defendant is liable for intentional interference with  
24 prospective economic advantage.
- 25 j. Whether defendant Axus Shanghai is liable for trade secret  
26 misappropriation.
- 27 k. Whether defendants are alter egos of each other.
- 28



1                   l.       Whether Roberta Trading Corporation has adequately stated a counterclaim  
2 against Plaintiff.

3                   m.       Whether finished pencils are excluded from the products encompassed by  
4 the distribution agreement.

5                   n.       Whether PVI and Carlos Fairbanks are liable for breach of contract.

6                   o.       Whether PVI and Carlos Fairbanks are liable for breach of the implied  
7 covenant of good faith and fair dealing.

8                   p.       Whether PVI and Carlos Fairbanks are liable for intentional interference  
9 with prospective economic advantage.

10                  q.       Whether Carlos Fairbanks is liable for intentional interference with  
11 contract.

12                  r.       Whether PVI is an alter ego of Carlos Fairbanks.

13                  **4.       MOTIONS**

14                  The following motions have already been filed in this litigation:

15                  a.       Specially Appearing Defendants' Motion to Extend Time to Respond to  
16 Complaint (Dkt. No. 35), which was denied on April 14, 2016. (Dkt. No. 43.)

17                  b.       Plaintiff's Motion to Enlarge Time to Serve Summons and Complaint on  
18 Foreign Defendants (Dkt. No. 44), which was granted on April 27, 2016. (Dkt. No. 54.)

19                  c.       Specially Appearing Defendants' Motion to Dismiss, Quash Service, and  
20 Strike. (Dkt. No. 47.) On June 7, 2016, the Court: (i) granted the motion to dismiss for lack of  
21 personal jurisdiction with leave to amend after a period of jurisdictional discovery; (ii) denied the  
22 motion to dismiss for failure to state a claim with leave to renew the motion after an amended  
23 complaint is filed; (iii) denied the motion to strike certain allegations in the complaint; (iv)  
24 granted without prejudice the motion to dismiss as to Mr. Viegas for insufficient service of  
25 process; (v) ordered that the jurisdictional discovery period shall close on August 31, 2016; and  
26 (vi) ordered Plaintiff to file its amended complaint no later than September 6, 2016. (Dkt. No.  
27 72.)  
28

1 d. Plaintiff's Motion for Substituted Service on Defendant Andre Viegas  
2 (Dkt. No. 75), which was granted on July 21, 2016. (Dkt. No. 82.)

3 e. Specially Appearing Defendants' Motion to Compel Jurisdictional  
4 Discovery (Dkt. No. 89), which was denied on September 1, 2016. (Dkt. No. 90.)

5 f. Specially Appearing Defendants' Motion to Dismiss Amended Complaint,  
6 (Dkt. 106), and Strike Declarations of Ronghua Liao and Julian Russell. (Dkt. 128.) On January  
7 18, 2017, the Court: (i) granted the motion to strike the declarations of Ronghua Liao and Julian  
8 Russell, (ii) granted the motion to dismiss Axus Stationery (Hong Kong) Ltd., Highton Ltd.,  
9 Howin Investments Ltd., and Noblesse (Hong Kong) Limited for lack of personal jurisdiction,  
10 (iii) denied the motion to dismiss Roberta Trading Corporation, Andre Viegas, and Kenpark Ltd.  
11 for lack of personal jurisdiction, (iv) granted the motion to dismiss Plaintiff's claims for breach of  
12 contract and breach of the implied covenant against Kenpark Ltd. and Andre Viegas for failure to  
13 state a claim, (v) granted the motion to dismiss Plaintiff's claims for intentional interference with  
14 contract and intentional interference with prospective business advantage against Kenpark Ltd.  
15 and Roberta Trading Corporation for failure to state a claim, (vi) denied Plaintiff's request for  
16 leave to file another amended complaint and (vii) held that "Plaintiff may later file a motion for  
17 leave to amend should further development of the record warrant such a request.". (Dkt. 144.)

18 g. Plaintiff's Motion to Dismiss Counterclaim (Dkt. No. 163), which became  
19 moot on March 17, 2017 with the filing of the Amended Counterclaim. (Dkt. 178.)

20 Plaintiff currently has a pending Motion for Substituted Service on Foreign Defendants.  
21 (Dkt. 155.) Defendants Roberta Trading Corporation and Andre Viegas have filed an opposition  
22 to that motion. (Dkt. 166.) Plaintiff filed a reply brief (Dkt. No. 168) and the motion is fully  
23 briefed. The Court vacated the hearing on this motion and held that it is appropriate for decision  
24 without oral argument. (Dkt. 174.)

25 Plaintiff also has currently pending a Motion to Strike Affirmative Defenses. (Dkt. 162.)  
26 Defendants Roberta Trading Corporation and Andre Viegas have filed an opposition to that  
27 motion. (Dkt. 171.) Plaintiff filed a reply brief (Dkt. No. 173), and the motion is fully briefed.  
28 The Court vacated the hearing on this motion and held that it is appropriate for decision without

1 oral argument. (Dkt. 178.)

2 In addition, Plaintiff has currently pending a Motion to Dismiss Amended Counterclaim.  
3 (Dkt. 179.) Defendants intend to oppose the motion. The hearing on that motion is set for May 2,  
4 2017.

5 Plaintiff anticipates that it will file a motion for leave to file a Second Amended  
6 Complaint. If a Second Amended Complaint is filed, the parties anticipate that certain defendants  
7 will file motion(s) to dismiss the Second Amended Complaint. The parties anticipate that  
8 discovery motions may be brought and that both parties will file motions for partial or complete  
9 summary judgment. *Daubert* motions may also be filed, depending on the parties' expert  
10 disclosures.

11 **5. AMENDMENT OF PLEADINGS**

12 The Court did not set a deadline for Plaintiff to file a motion for leave to file a Second  
13 Amended Complaint. Plaintiff proposes a deadline of May 16, 2017 for it to file a motion for  
14 leave to file a Second Amended Complaint.

15 **6. EVIDENCE PRESERVATION**

16 The parties have reviewed the Guidelines Relating to the Discovery of Electronically  
17 Stored Information, have met and conferred pursuant to Federal Rule of Civil Procedure 26(f),  
18 and are aware of and are taking reasonable and proportionate steps to preserve evidence relevant  
19 to the issues reasonably evident in this action.

20 **7. INITIAL DISCLOSURES**

21 Pursuant to stipulation (Dkt. No. 61 at 1), Plaintiff and Axus Stationery (Hong Kong)  
22 Ltd., Highton Ltd., Kenpark Ltd., and Roberta Trading Corporation exchanged initial disclosures  
23 pursuant to Federal Rule of Civil Procedure 26(a)(1)(A) on June 28, 2016. Roberta Trading  
24 Corporation and Andre Viegas intend to serve amended initial disclosures prior to the April 10  
25 case management conference. Pursuant to Federal Rule of Civil Procedure 26(a)(1)(D),  
26 following completion of service of the summons and the complaint on the remaining defendants  
27 and completion of service of the summons and counterclaim on Carlos Fairbanks, those parties  
28 will make their initial disclosures within 30 days after being served unless a different time is set

1 by stipulation or Court order.

2 **8. DISCOVERY**

3 During jurisdictional discovery, Plaintiff served interrogatories and document requests on  
4 Axis Stationery (Hong Kong) Ltd., Highton Ltd., Kenpark Ltd., Roberta Trading Corporation  
5 and Andre Viegas, and those defendants responded to these requests and produced documents.  
6 Plaintiff also took depositions of each of those corporate defendants and Andre Viegas. Before  
7 being dismissed from the case, Axis Stationery (Hong Kong) Ltd. served interrogatories, requests  
8 for admission and requests for production of documents on Plaintiff during jurisdictional  
9 discovery. Plaintiff produced over 19,000 pages of documents but responded with only  
10 objections to the majority of the discovery requests. The parties previously agreed that any  
11 depositions and interrogatories propounded for jurisdictional discovery would not count towards  
12 the limits on such discovery requests set by the Federal Rules of Civil Procedure.

13 Plaintiff has propounded merits-based interrogatories and document requests on Roberta  
14 Trading Corporation and Andre Viegas. Plaintiff also anticipates taking depositions of both  
15 defendants. Plaintiff also anticipates serving written discovery requests upon, and taking  
16 depositions of, the remaining defendants once they are served. Defendants anticipate serving  
17 written discovery on and taking depositions of Plaintiff and Mr. Fairbanks, once he is served.  
18 Defendants also anticipate taking depositions of and/or propounding written discovery on third  
19 parties, depending on development of the record. The parties do not anticipate requiring any  
20 additional phasing of discovery, or having discovery limited or focused on particular issues.

21 One particular discovery-related complication that Plaintiff foresees is the difficulty in  
22 scheduling depositions in mainland China, as Chinese law requires permission from the Central  
23 Authority (which is rarely granted). If the parties do not stipulate to having all depositions of  
24 Chinese witnesses take place in Hong Kong, or the Court does not issue an order compelling  
25 Defendants to appear in Hong Kong for depositions, then additional time will have to be built into  
26 the discovery schedule to allow Plaintiff to attempt to secure permission from the Central  
27 Authority to allow such depositions to take place in mainland China.

28 Another discovery issue that the parties have discussed and that may eventually need to be

1 addressed by the Court relates to Plaintiff's attempts to obtain discovery relating to five entities  
2 that have been dismissed from this case by the Court (Axus Stationery (Hong Kong) Ltd.,  
3 Kenpark Ltd., Highton Ltd., Noblesse (Hong Kong) Ltd. and Howin Investments Ltd.) and the  
4 claims previously asserted against those entities, all of which were dismissed from the litigation  
5 on January 18, 2017. Defendants contend that such discovery is not permissible because  
6 information pertaining to those dismissed claims and dismissed parties is neither relevant nor  
7 proportional to the needs of the case pursuant to Federal Rule of Civil Procedure 26(b)(1).

8 The parties entered into a stipulated protective order on August 15, 2016. (Dkt. 87.)

9 At present, the parties do not foresee the need for a stipulated e-discovery order. The  
10 parties do not presently foresee the need for any modification or limitation of the standard  
11 discovery rules, except as stated above. The parties' respective proposed schedules for  
12 completing discovery is presented in Section 17, *infra*.

13 **9. CLASS ACTIONS**

14 Not applicable.

15 **10. RELATED CASES**

16 To the parties' knowledge, there are no related cases in this district or before another court  
17 or administrative body.

18 **11. RELIEF**

19 Plaintiff seeks compensatory damages, consequential and special damages, punitive  
20 damages, restitution, and attorney's fees and costs. Plaintiff expects to present its computation of  
21 damages through its expert witness(es). At present, based on information known to it and without  
22 the benefit of expert opinion testimony, Plaintiff calculates that it has suffered damages of no less  
23 than \$20 million resulting from Defendants' wrongful conduct, exclusive of any exemplary  
24 damages under Cal. Civ. Code § 3426.3(c) for its claim for trade secret misappropriation under  
25 the California Uniform Trade Secrets Act, Cal. Civ. Code § 3426 *et seq.*

26 Roberta Trading Corporation expects to present its computation of damages through  
27 expert witness testimony. Based on information currently known to it, and without the benefit of  
28 expert testimony, Roberta Trading Corporation estimates that it has suffered damages of at least

1 \$20 million resulting from wrongful conduct of Carlos Fairbanks and PVI.

2 **12. SETTLEMENT AND ADR**

3 Prior to the filing of this lawsuit, the parties participated in an unsuccessful alternative  
4 dispute resolution process, including a final mandatory mediation, required by the distribution  
5 agreement.

6 The parties have met and conferred regarding ADR possibilities, have filed their ADR  
7 Certifications and a Notice of Need for ADR Phone Conference, and participated in several ADR  
8 Phone Conferences. Other than a settlement conference before a magistrate judge, the parties do  
9 not anticipate that any further ADR efforts will be fruitful at this time, especially in light of the  
10 parties' earlier alternative dispute resolution efforts.

11 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

12 On April 4, 2016, defendant Axus Stationery (Hong Kong) Ltd. declined to have a United  
13 States Magistrate Judge conduct all further proceedings in this case. (Dkt. No. 33.)

14 **14. OTHER REFERENCES**

15 The parties do not believe this case is suitable for reference to binding arbitration, a  
16 special master, or the Judicial Panel on Multidistrict Litigation at this time.

17 **15. NARROWING OF ISSUES**

18 At this time, the parties have not identified any issues that can be narrowed.

19 **16. EXPEDITED TRIAL PROCEDURE**

20 The parties consider this matter to be inappropriate for Expedited Trial Procedure.

21 **17. SCHEDULING**

22 Given Plaintiff's position that Plaintiff's claims against Roberta Trading Corporation and  
23 Andre Viegas are intertwined with its claims against the Non-Served defendants (and the  
24 defendants Plaintiff will seek to add back through a Second Amended Complaint), Plaintiff does  
25 not think those claims could be severed in this action or that it would be productive to set a trial  
26 date until the remaining defendants are served. At the same time, Plaintiff believes that fact  
27 discovery should proceed with respect to Mr. Viegas and Roberta Trading Corporation (with a  
28 proposed cutoff date of March 30, 2018), in light of the uncertainty as to when the Non-Served

1 Defendants will be served and Plaintiff's belief that Mr. Viegas (who Plaintiff contends is central  
2 to all of Plaintiff's claims) and Roberta Trading Corporation (who signed the distribution  
3 agreement) are likely in possession of much of the information relevant to the parties' claims and  
4 defenses. Plaintiff suggests that once the remaining defendants are served, the parties submit  
5 proposed case schedules to the Court and have those schedules reflect whatever discovery and  
6 motion practice has already taken place.

7         Given that the Court has ordered the case to proceed at this time against two defendants  
8 and that the case has been pending for over one year following extensive jurisdictional discovery  
9 and in light of the fact that Roberta Trading Corporation has filed counterclaims against the  
10 plaintiff and Carlos Fairbanks, Roberta Trading and Mr. Viegas do not believe that it would be  
11 appropriate to further delay issuance of a case schedule with respect to those parties. At the  
12 beginning of the litigation, the defendants requested that the plaintiff stipulate to a stay of the  
13 litigation to avoid the very circumstances that the plaintiff complains of now -- having potentially  
14 different case schedules for different litigants -- but the plaintiff declined to so stipulate and  
15 forced a fraction of the named defendants to engage in substantial jurisdictional discovery and  
16 motion practice and to litigate the claims against them. In light of the procedural posture of the  
17 case and the efforts and resources already undertaken by the served litigants and the Court at the  
18 plaintiff's insistence, Roberta Trading Corporation and Mr. Viegas respectfully request that the  
19 Court issue a case schedule at this time to assist the parties in efficiently proceeding with the  
20 litigation. Roberta Trading Corporation and Mr. Viegas submit that, should further developments  
21 impact that schedule, the Court and the parties can consider whether to adjust the schedule at that  
22 time.

23         Should the Court decide to issue a schedule at this time, the parties respectfully suggest  
24 the following schedule based on the difficulties Defendants have experienced in the past from  
25 producing documents from mainland China<sup>3</sup>:

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26 <sup>3</sup> During jurisdictional discovery, Plaintiff propounded document requests on June 6, 2016. Due  
27 to complications over the production of documents stored in mainland China and following meet  
28 and confer discussions between the parties during which Plaintiff specifically requested the

| <b>Date</b>      | <b>Event</b>   |
|------------------|--|
| May 16, 2017     | Deadline for Plaintiff to file a motion for leave to file a Second Amended Complaint.  |
| June 27, 2017    | Hearing on Plaintiff's motion for leave to file a Second Amended Complaint.  |
| July 11, 2017    | If Court grants Plaintiff's motion for leave to file a Second Amended Complaint, deadline for Plaintiff to file Second Amended Complaint.  |
| August 1, 2017   | If Second Amended Complaint is filed, deadline for all defendants to file response to Second Amended Complaint.  |
| March 30, 2018   | Close of fact discovery  |
| April 4, 2018    | Initial expert disclosures due   |
| May 4, 2018      | Rebuttal expert disclosures due  |
| June 1, 2018     | Close of expert discovery  |
| June 28, 2018    | Deadline to file dispositive and <i>Daubert</i> motions (Parties still obligated to first obtain leave to file motion for summary judgment and follow pre-filing conference requirements as stated in Standing Order). |
| July 26, 2018    | Deadline to file oppositions to dispositive and <i>Daubert</i> motions   |
| August 9, 2018   | Deadline to file replies to dispositive and <i>Daubert</i> motions   |
| August 23, 2018  | Hearing on dispositive and <i>Daubert</i> motions  |
| October 19, 2018 | Pretrial conference  |
| November 5, 2018 | First day of trial   |

production of various categories of documents, the defendants produced 4,769 documents between October 25, 2016 and November 4, 2016 (in addition to the 451 documents they produced by August 31, 2016 – the close of the jurisdictional discovery period). The defendants maintained that their prior productions fully complied with their jurisdictional discovery obligations, but nevertheless agreed as a compromise to produce additional documents when, after the close of discovery, Plaintiff specifically requested that they continue producing certain categories of documents. It was Plaintiff's expectation that the defendants would produce only a few dozen documents, not nearly 5,000 new documents nearly five months after Plaintiff first propounded its RFPs.



Plaintiff also proposes the following schedule should the Court grant its Motion for Substituted Service on Foreign Defendants on or before the Case Management Conference:

| Date           | Event  |
|----------------|--|
| April 10, 2017 | Plaintiff is permitted to propound discovery on defendants Axus Stationery (Shanghai) Ltd., Shanghai Lexon, Shanghai Marco, and Peifeng “Brian” Xu. Counterclaimants permitted to propound discovery on Carlos Fairbanks.                    |
| July 11, 2017  | If Court denies Plaintiff’s motion for leave to file a Second Amended Complaint, deadline for defendants Axus Stationery (Shanghai) Ltd., Shanghai Lexon, Shanghai Marco and Peifeng “Brian” Xu to file response to First Amended Complaint. |

It is Defendants’ position that, irrespective of how the Court rules on PVI’s motion for substituted service on the Foreign Defendants, it would be premature and inappropriate to permit PVI to propound discovery on those defendants before they have had an opportunity to respond to the complaint and before the parties have litigated, and the Court has decided, whether the complaint is viable with respect to those defendants. Accordingly, Defendants do not believe it would be appropriate to permit PVI to begin propounding discovery on the Foreign Defendants as of April 10, 2017, which is three months before PVI’s proposed deadline for those defendants to respond to any complaint.

#### **18. TRIAL**

Plaintiff and Defendant/Counterclaimant Roberta Trading Corporation have demanded a jury trial. Given the early stage of this litigation, the parties believe it is premature to estimate the length of the trial of this matter.

#### **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

All served parties have filed their Certification of Interested Entities or Persons pursuant to Civil L.R. 3-15.

Plaintiff’s Certification listed the following persons and entities: PVI; Carlos Fairbanks (Shareholder of PVI); Axus Stationary (Shanghai) Ltd. (Defendant); Axus Stationary (Hong Kong) Ltd. (Defendant); Shanghai Marco Stationary Co. Ltd. (Defendant); Shanghai Laikesheng Pen Material Co. Ltd. (Defendant); Peifeng Xu (Defendant); Andre Viegas (Defendant); Highton Ltd. (Defendant); Roberta Trading Corporation (Defendant); and Kenpark Ltd. (Defendant).

1 (Dkt. No. 11.)

2 The Specially Appearing Defendants' Certification listed the following persons and  
3 entities on behalf of Axus Stationery (Hong Kong) Ltd.: Beilin Investment (non-party); Yilin  
4 Investment (non-party); Chen Gao Chao (non-party); Wang Ding Li (non-party); and Yang Min  
5 (non-party). (Dkt. No. 69.) Highton Ltd., Roberta Trading Corporation and Kenpark Ltd. had no  
6 interested entities or persons to report other than the named parties. (*Id.*)

7 **20. PROFESSIONAL CONDUCT**

8 All attorneys of record for the parties have reviewed the Guidelines for Professional  
9 Conduct for the Northern District of California.

10  
11 Dated: August 3, 2017

GAW | POE LLP

12  
13 By: /s/ Randolph Gaw  
Randolph Gaw

14 Attorneys for Plaintiff Products and  
15 Ventures International

16  
17 Dated: August 3, 2017

HOGAN LOVELLS US LLP

18  
19 By: /s/ Mark C. Goodman  
Mark C. Goodman

20 Attorneys for Defendants Roberta  
21 Trading Corporation, and Andre Viegas

22 **ATTESTATION OF SIGNATURE**

23 I attest under penalty of perjury under the laws of the United States of America that I have  
24 received the concurrence in the filing of this document from the listed signatories as required by  
25 Local Rule 5-1(i)(3).

26  
27 Dated: August 3, 2017

28  
By: /s/ Randolph Gaw  
Randolph Gaw